



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Fire Engineering Company, Inc.

File: B-245525

Date: September 24, 1991

Ronald F. Sysak, Esq. for the protester.
Henry J. Gorczycki, Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Bid was properly rejected as nonresponsive where bidder submitted unsigned Certificate of Procurement Integrity with its bid, notwithstanding that the bidder had otherwise completed the certificate.

DECISION

Fire Engineering Company, Inc. protests the rejection of its bid as nonresponsive under invitation for bids (IFB) No. 148-3636, issued by the Department of Justice, Bureau of Prisons for the installation of an automatic sprinkler system in the Federal Correctional Institution, Terminal Island, California. The Bureau of Prisons rejected the bid because Fire Engineering failed to sign the Certificate of Procurement Integrity included in the IFB.

We dismiss the protest.

The IFB contained a Certificate of Procurement Integrity with a clearly designated blank for the signature of the officer or an employee responsible for the bid, and informed bidders to include a completed certificate with the bid or be rejected as nonresponsive. Fire Engineering's bid included a certificate that had been filled in, but not signed.

A responsive bid is one that unequivocally offers to provide the exact thing called for in the IFB, such that acceptance of the bid will bind the contractor in accordance with all the IFB's material terms and conditions. Mid-East Contractors, Inc., B-242435, Mar. 29, 1991, 70 Comp. Gen. ___, 91-1 CPD ¶ 342. The procurement integrity certification requirement is a material term because it imposes substantial

legal duties on the bidder.^{1/} Id. The bidder must sign the certificate in order for the bid to be considered responsive because a failure to sign, as expressly required by the certificate, calls into question the bidder's commitment to these substantial legal duties--which go beyond the bidder's obligation to perform the work covered by the contract. Ed A. Wilson, Inc., B-244634, July 12, 1991, 91-2 CPD ¶ 53.

Fire Engineering asserts that the failure to properly complete the certification is a waivable minor informality under Federal Acquisition Regulation (FAR) § 14.405. However, as set out above, the certifier's additional obligations are material, such that a failure to sign the certificate, even though the bid itself is signed, cannot be considered a minor informality capable of being cured after bid opening, General Kinetics, Inc., Cryptek Div., B-244148, Aug. 19, 1991, 91-2 CPD ¶ ____.

The protest is dismissed.^{2/}


James A. Spangenberg
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^{1/} In particular, the certificate implements several provisions of the Office of Federal Procurement Policy (OFPP) Act, 41 U.S.C.A. § 423 (West Supp. 1991). The OFPP Act prohibits activities involving soliciting or discussing post-government employment, offering or accepting a gratuity, and soliciting or disclosing proprietary or source selection information. The certificate obligates a named individual to comply with the provisions of the Act, to certify the veracity of disclosures required by the Act, and to collect similar certificates from all other individuals involved in the preparation of bids or offers.

^{2/} Fire Engineering also argues that the certificate was not required to be included in the IFB. This contention is untimely under our Bid Protest Regulations, since it concerns an alleged solicitation impropriety, which was required to be protested prior to bid opening. 4 C.F.R. § 21.2(a)(1) (1991), as amended by 56 Fed. Reg. 3759 (1991). In any case, the certificate is required by FAR § 3.104-10 in all solicitations where the resultant award is expected to exceed \$100,000. This regulation implements the enabling legislation, 41 U.S.C.A. § 423 (West Supp. 1991). Mid-East Contractors, Inc., supra.